

Kentucky Bar Association Criminal Justice Roundtable Findings and Recommendations

On December 4, 2009, the membership of the KBA Criminal Justice Roundtable unanimously passed a Resolution adopting the following Statement, Findings and Recommendations to be disseminated to the public and forwarded to the Governor and the Kentucky General Assembly for their consideration and action:

Especially now, when faced with these tough economic times, it is critical that judges, prosecutors and public defenders work together to ensure adequate funding for the proper functioning of the criminal justice system. The influx of cases and the workload of the courts are beyond the control of the judiciary, the prosecution and the defense. Their roles and responsibilities are not discretionary -- they have no ability to reduce or limit the demands placed on them by constitutional requirements and statutorily imposed duties, including the right to counsel, the right to a speedy trial, and the right to due process. These are rights that are mandated by law and essential to a free and safe society. Adequate resources must be provided to comply with this mandate and to protect the citizenry and all those who come before the courts seeking justice. Fair, balanced and reliable results cannot be achieved without funding that is based upon the reality of the on-going caseloads of judges, prosecutors and public defenders. In this regard, it is vital for the bar to provide leadership in preserving the principles of our democracy, as well as to assure everyday public safety. As the only statewide group with all the lawyers of Kentucky as members, the Kentucky Bar Association is interested in advancing these interests and improving the effective administration of justice in the courts of our Commonwealth. The undersigned members of that Roundtable hereby make the following Findings and Recommendations to the Governor and the Kentucky General Assembly to ensure that the rule of law prevails and the criminal justice system is not compromised in fulfilling its constitutional responsibilities and statutory duties:

Findings and Recommendations on Criminal Justice System Workload

I. Findings

No. 1A: Although case counting does not fully capture all work, case counting is the most expedient, traditional and accepted method for keeping track of and assigning work.

No. 1B: Case numbers presented by AOC, prosecutors, and public defenders are generally accurate as defined by each organization, although prosecutors and defenders differ both in the types of cases they count and the methods used to count them. For instance, whereas AOC counts cases filed and closed, Commonwealth Attorneys count cases handled, including cases carried over into the next year, and DPA counts cases to which it is appointed.

No. 1C: AOC, prosecutors and public defenders count cases differently because each has different roles, does different work, and performs different functions.

No. 1D: Prosecutors and public defenders count some types of cases that the other does not count because that is not a part of the other's function (*e.g.*, prosecutors present cases to the Grand Jury, proceedings in which public defenders, for the most part, are not involved; public

defenders represent parole violators, hearings in which County and Commonwealth's Attorneys are not involved).

No. 1E: Establishing uniform case counting methods to measure, assess and assign reasonable and appropriate workloads is difficult because different components of the criminal justice system collect and count case data differently depending upon their respective responsibilities and their unique roles and responsibilities. Additionally, the local culture and practices in various jurisdictions have a significant impact on case calculation.

No. 1F: Even though a strict, uniform method of counting cases may not be possible given the differing duties and responsibilities of the prosecution and the defense, as well as the differing interests and purpose of AOC, common principles can and should be used in reporting workloads. Moreover, there are certain types of work that can be captured and accounted for by both prosecution and defense. For instance, the prosecution and the defense can and should count cases carried over into the next year to better quantify actual workloads. Additionally, if workload is to be accurately measured, both the prosecution and defense should count probation revocations as cases.

No. 1G: Although the prosecution and defense have to count different types of cases in order to track their respective workloads, a full explanation of the way each agency counts cases makes the comparison of caseload figures more meaningful. Caseload figures cannot be meaningfully compared without an explanation of what each number represents.

No. 1H: The AOC data screen for appointment of a public advocate is a discretionary screen, meaning a clerk might not fill out the information on the screen. The result is that AOC data may not reflect all public defender appointments.

I. Recommendations

No. 1: When reporting caseloads, prosecutors and public defenders should identify total cases as the number of cases opened each year, plus the cases carried over into the next year.

No. 2: AOC should investigate the feasibility of making the clerk's screen for appointment of a public advocate a mandatory screen and one that is required to be filled in when a public advocate is appointed, even if the appointment is made after the initial appearance of a defendant or after withdrawal of a private attorney.

No. 3: In communicating caseloads for the purpose of demonstrating the amount of work accomplished or the amount of funding needed, the prosecution and public defenders should attempt to count cases in a way that makes the comparison of caseload figures easier and more comprehensible. Toward that end, both the prosecution and defense should count cases carried over into the next year to better quantify actual workloads. Additionally, if workload is to be accurately and equally measured, both the prosecution and defense should count probation revocation cases. If, for whatever reason, this cannot be accomplished, then in order to avoid confusion, misrepresentation and misleading, counterproductive criticism, it is expected, and should be required, that any comments or questions about the caseloads of either the prosecution or the defense be accompanied by an explanation that provides the full context of the numbers in question.

No. 4: Moving into the future, prosecutors and public defenders should make every effort to calculate their workloads in the same way. This should be an ongoing effort that ensures proper comparisons are made consistently over time, so that the goal of establishing a

uniformly fair and accurate way of assessing and reporting workloads (as opposed to caseloads) can be accomplished, one which acknowledges both the seriousness of the cases involved and the ethical responsibilities of the attorneys handling them.

Findings and Recommendation on Criminal Justice Funding

II. Findings

No. 2A: The most basic function of government is public safety.

No. 2B: The criminal justice system has the responsibility to ensure public safety through a process that is fair and which produces results that are valid, just and reliable.

No. 2C: Because of inadequate funding for the Kentucky Courts, prosecutors, and public defenders, the Kentucky criminal justice system is at significant risk of failing to discharge its constitutional duties and fundamental public safety obligations.

No. 2D: If any part of the criminal justice system is not adequately funded, the entire system does not work.

No. 2E: Courts, prosecutors and public defenders do not have control over the crime rate or discretion in the number of cases adjudicated in the criminal justice system. Therefore, adequate funding is not a discretionary matter.

No. 2F: In order to ensure public safety and the protection of constitutional rights, adequate funding for all components of the criminal justice system in Kentucky is essential.

II. Recommendation

No. 1: Prosecutors and public defenders should collaborate and unite in advocating for adequate funding of all parts of the criminal justice system, and should look for a way to establish a common funding formula that will facilitate proper, uniform and balanced allocation of needed resources for both of their essential functions, as well as that of the entire criminal justice system.

No. 2: Adequate funding should be provided to the courts, prosecutors, and public defenders so the criminal justice system in Kentucky can properly protect constitutional rights, guarantee public safety, and ensure that the courts render valid and reliable results in a timely and fair manner.

* * * * *

Members of the Kentucky Bar Association Criminal Justice Roundtable:

Hon. Martin E. Johnstone, Supreme Court of Kentucky (Retired);

Hon. Sara W. Combs, Chief Judge, Kentucky Court of Appeals;

Hon. J. Michael Brown, Secretary of the Justice Cabinet;

Mike Bowling, Former Chair, House Judiciary Committee;

Pierce Whites, General Counsel to the House Speaker;

Harland Hatter, General Counsel to the Senate President;

Rob Jones, Executive Director, Finance and Administration Cabinet Office of Policy & Audit;

Professor William H. Fortune, University of Kentucky College of Law;
Professor Leslie W. Abramson, Brandeis School of Law at the University of Louisville;
Professor Mark Stavsky, NKU Chase College of Law;
Janet M. Graham, Deputy Assistant Attorney General;
Allen C. Trimble of Williamsburg, Commonwealth Attorney of the 34th Judicial Circuit and
President of the Kentucky Commonwealth's Attorney's Association;
R. David Stengel, Commonwealth Attorney (30th Judicial Circuit);
Ian G. Sonogo, Prosecutorial Advisory Council;
Christopher T. Cohron, Commonwealth's Attorney (8th Judicial Circuit);
J. Michael Foster, Christian County Attorney (3rd Judicial Circuit);
William E. Johnson, Attorney, Frankfort;
David A. Lambertus, Attorney at Law, Louisville;
W. Robert Lotz, Attorney at Law, Covington;
Jerry J. Cox, Attorney at Law, Mt. Vernon, KY;
Daniel T. Goyette, Louisville Metro Public Defender; President of the Kentucky Association of
Criminal Defense Lawyers;
Edward C. Monahan, Public Advocate;
Bruce K. Davis, KBA President-Elect;
Margaret E. Keane, KBA Vice-President;
Robert C. Ewald, KBA Past President; and
KBA President Charles E. "Buzz" English, Jr., of Bowling Green.